In the Supreme Court of the United States

OCTOBER TERM, 1977

GEORGIA-PACIFIC CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statement	2
Argument	6
Conclusion	11
Appendix A	1a
Appendix B	13a

CITATIONS

Cases:

Brotherhood of Locomotive Firemen & Enginemen v. *Bangor & Aroostook R. Co.*, 389 U.S. 327	10
Herb v. *Pitcairn*, 324 U.S. 117	11
Kerotest Mfg. Co. v. *C-O-Two Co.*, 342 U.S. 180	7
Landis v. *North American Co.*, 299 U.S. 248	6
Travis v. *United States*, 287 F. 2d 916, certiorari denied, 368 U.S. 824	8-9

Statutes:

Declaration of Taking Act, 46 Stat. 1421, as amended, 40 U.S.C. 258a-258e	4
Flood Control Act of 1962, Section 203, 76 Stat. 1180, 1188	2
Tucker Act, 28 U.S.C. 1491	2, 7

Statutes—Continued	Page
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Section 304(c), 84 Stat. 1906, 42 U.S.C. 4654(c)	2, 11
28 U.S.C. 1358	7
Miscellaneous:	
H.R. Doc. No. 569, 87th Cong., 2d Sess. (1962)	2
1A (Pt. 2) Moore's *Federal Practice* (2d ed. 1977)	9

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No. 77-1514

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v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. App. A-1 to A-11) is reported at 568 F.2d 1316.

JURISDICTION

The order of the Court of Claims suspending its proceedings was issued on January 25, 1978. The petition for a writ of certiorari was filed on April 24, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the Court of Claims abused its discretion when, before trial and before any determination of liability, it suspended proceedings in a Tucker Act suit for just compensation pending the outcome of a related condemnation proceeding in a federal district court.

STATEMENT

In 1962 Congress authorized the R. D. Bailey Lake Project to be constructed for flood control purposes by the Corps of Engineers, Department of the Army, on the Guyandot River and tributaries in Mingo and Wyoming Counties, West Virginia. See Flood Control Act of 1962, Section 203, 76 Stat. 1180, 1188; H.R. Doc. No. 569, 87th Cong., 2d Sess. (1962). Over approximately 9,288 acres within the project area, petitioner either owns the land in fee or holds mineral rights or other interests. On August 22, 1975, petitioner sued in the Court of Claims for just compensation arising from the alleged taking of its property by the United States in connection with project activities. Jurisdiction over the claim was predicated on 28 U.S.C. 1491, the Tucker Act. Petitioner also claimed that Section 304(c) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1906, 42 U.S.C. 4654(c), authorized recovery against the government of petitioner's expenses incurred in the litigation, including attorneys' fees and appraisal, forest management, economists', and engineering fees.

Petitioner did not specify the time or times when the United States allegedly took its property within the project area, deferring those questions for proof at trial (App. A, *infra*, p. 9a).[1] The alleged taking was said to arise from "a continuing course of conduct" by officials of the Corps of Engineers, primarily in the years 1974 and 1975, "which has effectively deprived * * * [petitioner] of the free use and beneficial enjoyment of its property and resources, and has destroyed the economic value of said property and resources" (App. A, *infra*, pp. 8a-9a). Petitioner did not allege that there had been any physical invasion of its property by the government at any time (Pet. App. A-3 n. 1). Petitioner claimed, rather, that by allegedly imposing restrictions on mining activity in the area, and by allegedly threatening legal actions and asserting informal prohibitions and regulations, the government had destroyed the economic value of petitioner's property (*ibid.*).

By its answer dated December 19, 1975, the United States denied that it had taken any of petitioner's property in the project area (App. B, *infra*, p. 17a). The government asserted that it had merely been exercising its rights under agreements it had with petitioner, or imposing lawful regulations that fell

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[1] The petition filed in the Court of Claims on August 22, 1975, and the answer of the United States filed on December 19, 1975, are set forth as Appendices A and B, respectively, to this brief.

short of a taking, or doing both things (Pet. App. A-3 n. 1).

Thereafter, on March 5, 1976, the United States filed a condemnation action and declaration of taking [2] in the United States District Court for the Southern District of West Virginia (*United States* v. *9,268.52 Acres in Mingo and Wyoming Counties, West Virginia, et al.*, Civil No. 76-0045 BL). By its initiation of that action the United States took in condemnation, as of March 5, 1976, substantially all of petitioner's land that was the subject of petitioner's Tucker Act suit in the Court of Claims (Pet. 3; Pet. App. A-2).

On April 14, 1976, petitioner sought a stay of the valuation proceedings in the district court pending resolution by the Court of Claims of its Tucker Act suit, which alleged an earlier taking. The district court denied the stay, and petitioner appealed. On August 25, 1977, the Court of Appeals for the Fourth Circuit dismissed the appeal, holding the district court's order non-appealable and finding no abuse of discretion that would justify mandamus. *United States* v. *Georgia Pacific Corp.*, 562 F.2d 294. The condemnation action is still pending in the district court and no valuation proceeding has yet commenced there.

Meanwhile, on May 24, 1976, the United States moved for summary judgment in the Court of Claims,

[2] See Declaration of Taking Act, 46 Stat. 1421, as amended, 40 U.S.C. 258a-258e.

asserting that no taking of petitioner's properties had occurred prior to March 5, 1976, when they were condemned in the district court. Petitioner cross-moved for summary judgment, asserting that a taking had occurred in August 1975, prior to the filing of the district court condemnation action, and asking the Court of Claims to refer both motions to one of its trial judges to make a thorough and probing review of the record in the first instance (Pet. App. A-2 to A-3).

In its opinion of January 25, 1978, the Court of Claims (Davis, J.) denied summary judgment to both parties, concluding that "[t]here is a hard residue of factual dispute which would first have to be tried and determined in the Trial Division" (Pet. App. A-3). Instead of taking that course, however, the court suspended further proceedings before it until the district court in the condemnation action "has decided when the date of taking occurred, or has refused to inquire whether a time prior to March 5, 1976 [the date of the declaration of taking in the district court], is the correct one" (Pet. App. A-4; see also, Pet. App. A-11). The Court of Claims concluded that it would lack jurisdiction to award just compensation to petitioner if petitioner's property was taken no earlier than March 5, 1976, and that petitioner's sole claim for relief in that event would be in the district court (Pet. App. A-8). Accordingly, "[t]he nub of it is that only the District Court is in a position to decide all phases of the litigation in the event [petitioner's] claim of an early taking should

be rejected" (*ibid.*). The Court of Claims added, however, that if the district court determined that "it will not consider any date of taking before March 1976, we shall terminate the suspension here and proceed toward determination of the inverse condemnation claim of a pre-March 1976 taking" (Pet. App. A-11).

ARGUMENT

The decision of the Court of Claims to suspend proceedings in this case, in order to await the disposition of certain issues in the related case pending in the District Court for the Southern District of West Virginia, was not an abuse of discretion and poses no issue warranting review by this Court at this time.

1. The action of the Court of Claims in staying the proceedings before it was agreeable with established principles set forth in the decisions of this Court. This Court has made it clear that when two cases presenting the same or related issues are pending in the federal courts, the federal courts have power to stay one of the cases in order to promote the efficient use of judicial resources. Thus, in *Landis* v. *North American Co.*, 299 U.S. 248, 254-255, the Court held (per Justice Cardozo) that "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even

balance." A stay order may be justified even though the disposition in one proceeding "may not settle every question of fact and law" in the other, and even though the parties and the issues in the two proceedings are not identical (299 U.S. at 254, 256).

The Court has also emphasized that a decision by a lower federal court to stay proceedings to promote judicial efficiency is entitled to substantial deference. In *Kerotest Mfg. Co.* v. *C-O-Two Co.*, 342 U.S. 180, 183-184, the Court said:

> Necessarily, an ample degree of discretion, appropriate for disciplined and experienced judges, must be left to the lower courts. The conclusion which we are asked to upset derives from an extended and careful study of the circumstances of this litigation. Such an estimate has led the Court of Appeals twice to conclude that all interests will be best served by prosecution of the single suit in Illinois. Even if we had more doubts than we do about the analysis made by the Court of Appeals, we would not feel justified in displacing its judgment with ours. [Footnote omitted.]

In the instant case, two federal courts in two separate proceedings exercise jurisdiction over the same parties and the same subject matter. The Court of Claims has original jurisdiction under the Tucker Act (28 U.S.C. 1491) over petitioner's claim for just compensation for the alleged taking of its property. Because of the subsequent filing of the declaration of taking in the district court, however, the district court has original jurisdiction under 28 U.S.C. 1358

to determine just compensation for the admitted taking by the United States of essentially the same property. The "bone of contention," as the Court of Claims recognized, is the date of taking, with petitioner asserting in the Court of Claims a date prior to August 1975 and the United States asserting in the district court a date of March 1976 (Pet. App. A-4).

After a careful analysis of these parallel proceedings, the Court of Claims decided to stay the action before it. Contrary to petitioner's assertions (Pet. 2, 5, 7, 10), the Court of Claims did not "refer" or "transfer" this case to the district court. The Court of Claims retains jurisdiction over this action (Pet. App. A-11). It has simply elected to wait for the district court to determine (or refuse to determine) whether the United States took any of petitioner's property prior to the filing of the condemnation proceeding on March 5, 1976. As the Court of Claims made clear, if the district court declines to address that issue, the Court of Claims will "terminate the suspension here and proceed toward determination of the inverse condemnation claim of a pre-March 1976 taking" (*ibid.*).

The considerations reviewed by the Court of Claims in determining to stay the proceedings before it demonstrate the exercise of an informed discretion. As the Court of Claims acknowledged (Pet. App. A-8), it has "no jurisdiction to determine valuation [of petitioner's property] if the taking occurred only when the taking-declaration was filed" in the district court on March 5, 1976. Cf. *Travis* v. *United States*, 287 F.2d 916, 919-921 (Ct. Cl.), certiorari denied, 368

U.S. 824. In that event, the jurisdiction of the district court would be exclusive and the district court could afford petitioner complete relief. Thus, the district court—which also had jurisdiction over additional condemnees besides petitioner—was the "tribunal which has the widest scope to handle all the parts of what is in common sense one unified piece of litigation" (Pet. App. A-8 to A-9).

In such circumstances, the Court of Claims was well within its discretion in deciding to stay its proceedings in order to permit an initial decision by the district court and thus to promote "the efficient use of judicial resources." 1A (Pt. 2) Moore's *Federal Practice* ¶ 0.203[4] (2d ed. 1977).

2. Petitioner's assertion (Pet. 7-8) that the Court of Claims' order purports to give the district court jurisdiction to adjudicate Tucker Act claims exceeding $10,000 is incorrect. The district court, as yet, has made no decision concerning the scope of its jurisdiction to hear any of petitioner's claims. All that has happened is that the Court of Claims has stated, in an interlocutory order, that:

> The condemnation action puts in issue the date of taking if [petitioner] so wills it; if [petitioner] tells the condemnation court, as we think it should, that in the company's view the taking occurred before March 5, 1976, that court can (in our view) decide the question and determine compensation accordingly * * *. [Pet. App. A-10.]

The extent to which the district court will assume jurisdiction, and the correctness of any such assump-

tion, are only matters of speculation now. Any ruling from the district court that ensues can be presented to the Court of Appeals for the Fourth Circuit in the ordinary course of appellate review. The court of appeals would then be possessed of an actual decision, rendered in the context of specific facts, for its consideration, and further review could then be sought in this Court on that basis.

The Court of Claims was aware that the district court "may disagree either as to the range of the condemnation court's authority or as to the discretionary appropriateness of converging all aspects of this particular litigation in the District Court" (Pet. App. A-10 to A-11). Accordingly, the Court of Claims did "no more than suspend proceedings here" until the district court decides "what course it will take" (*id.* at A-11).[3] Until the district court has acted, none of the asserted jurisdictional errors that may arise from the interlocutory order of the Court of Claims are ripe for review. Nor is there a realized conflict with any ruling of any other federal court. See *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook R. Co.*, 389 U.S. 327.[4] The

[3] If the district court declines to consider whether there was a pre-1976 taking, the Court of Claims will "terminate the suspension * * * and proceed toward determination of the inverse condemnation claim," in which event the jurisdictional arguments of petitioner will be mooted (Pet. App. A-11).

[4] There is, accordingly, no occasion now to reconcile any of the discussion in the opinion of the Court of Claims with the Ninth Circuit cases which petitioner has cited (Pet. 13-14).

views of the Court of Claims concerning the district court's jurisdiction are at this point only advisory. This Court's certiorari power is used "to correct wrong judgments, not to revise opinions." *Herb* v. *Pitcairn*, 324 U.S. 117, 126.[5]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1978.

[5] Petitioner asserts (Pet. 12) that the result below "deprived" it of its "statutory right" to recover litigation expenses in the Court of Claims under Section 304(c) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This assertion is likewise premature. The Court of Claims, which still retains jurisdiction of this case, has made no determination concerning the recoverability of petitioner's litigation expenses, and neither has the district court.

APPENDIX A

IN THE UNITED STATES COURT OF CLAIMS

Docket No. 315-75

[Filed Aug. 22, 1975]

GEORGIA PACIFIC CORPORATION, PLAINTIFF

v.

THE UNITED STATES OF AMERICA, DEFENDANT

PETITION

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1. *Jurisdiction*—This Court has jurisdiction pursuant to 28 U.S.C. § 1491.

2. *Party Plaintiff*—Plaintiff is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business at Portland, Oregon. Plaintiff is in the business of, among other things, growing, processing and marketing timber and forestry products.

3. *Previous Action on Claims*—No action with respect to the claims herein set forth has been taken by Congress or any department of the government, or in any prior judicial proceeding.

4. Plaintiff, by this action, seeks just compensation under the Fifth Amendment to the Constitution of the United States for the value of property taken

by the United States from plaintiff, and for severance damages and other damages suffered by plaintiff as a result of said taking.

5. The exact amount of plaintiff's claim cannot now be determined and is subject to proof at trial.

6. Plaintiff's claims in the present petition arise out of activities by the United States, by and through its officers and agents, including the Army Corps of Engineers (hereinafter "the Corps"), in regard to the R. D. Bailey Lake Project, a dam construction and flood control project authorized by the River and Harbor Act of 1962, Pub.L.No. 87-874, 76 Stat. 1173, 1188. The project is located on the Guyandot River in Wyoming County, West Virginia.

7. The United States has projected that approximately 20,000 acres of land will be taken by it for project purposes, which purposes include, but are not limited to, the construction of a dam on the Guyandot River and the development of acreage on the periphery of the project reservoir for "recreational purposes." Plaintiff is the owner in fee, has ownership interests in mineral rights, or has other valuable interests in, approximately 9,288 acres of land within the project area. (A map illustrating the boundaries of the R. D. Bailey Lake Project take area (bordered in black), and the boundaries of plaintiff's property within the project area (red cross-hatch area) is attached to this petition as Appendix A. A legal description of the boundaries of plaintiff's property within the project area, too voluminous to be attached to this petition, will be proferred [*sic*] to the Court

simultaneously with the filing of this petition.) Plaintiff's land contains valuable timber and mineral resources, including but not limited to, coal, oil and natural gas reserves.

Inverse Condemnation

8. On or about March 14, 1967, representatives of the Corps requested the right to enter upon plaintiff's land for the purpose of performing preliminary project functions. Pursuant to these requests, plaintiff granted the Corps, without compensation, a right-of-entry on approximately 500 acres of plaintiff's land for the purpose of performing railroad relocation, construction and other project functions. This right-of-entry agreement was amended and extended on a number of occasions with the final extension terminating on December 31, 1973.

9. Effective January 1, 1974, plaintiff, as lessor, entered into a land-lease agreement with the United States covering approximately 6,720 acres of plaintiff's land within the R. D. Bailey Lake Project area. The stated purpose of the lease was to permit the government to perform "construction, reservoir clearing and other project needs" on plaintiff's land. Furthermore, paragraph 12 of the executed land-lease agreement provided:

> "It is stipulated and agreed that this lease is made subject to the rights of the Lessor and its coal, oil, and gas Lessees in accordance with the rights heretofore granted by Lessor to its coal, oil, and gas Lessees as more fully shown by writ-

ings of public record in Wyoming County, West Virginia."

10. *Development of Coal and Other Mineral Resources*—Plaintiff has undertaken to lease certain defined tracts of land within the project area to various mineral development companies for the purpose of prospecting, mining and developing coal and other mineral resources. Plaintiff receives, in consideration of said leases, a tonnage royalty based upon a percentage of the yearly average selling price over a prescribed minimum royalty.

11. Prior and subsequent to the above-described land-lease agreement between plaintiff and the United States, plaintiff entered into, or acquired (as lessor) by right of succession, the following mineral development leases covering approximately 8,982.26 acres of plaintiff's land within the boundaries of the R. D. Bailey Lake Project area:

a. Indenture of Lease, dated January 1, 1956, between plaintiff and Island Creek Coal Company for an original term of twenty years and thereafter for like terms until all recoverable coal has been mined and removed, covering approximately 8,871.89 acres, more or less, of which approximately 1,430 acres are located within the project take area.

b. Indenture of Lease, dated May 14, 1957, between plaintiff and Claude Phillips for an original term of one year and thereafter for like terms until all coal has been mined and removed, covering approximately 65 acres, more or less. The area covered

by the Phillips lease has been mined out and, hence, the lease has been terminated.

c. Indenture of Lease, dated July 1, 1966, between plaintiff and Island Creek Coal Company for an original term of twenty years and thereafter for like terms until all mineable and merchantable coal has been mined and removed, covering approximately 7,810 acres, more or less, of which approximately 297 acres are located within the project take area.

d. Indenture of Lease, dated August 1, 1968, between plaintiff and Island Creek Coal Company for an original term of 20 years and thereafter for like terms until all recoverable coal has been mined and removed, covering approximately 6,031.59 acres, more or less, of which approximately 1,505 acres are located within the project take area.

e. Indenture of Lease, dated December 1, 1974, between plaintiff and Variable Mining Company for an original term of five years and thereafter for like terms until all mineable and merchantable coal has been mined and removed, covering approximately 10,000 acres, more or less, of which approximately 2,556 acres are located within the project take area.

f. Indenture of Lease, dated June 12, 1975, between plaintiff and Gilbert Imported Hardwoods, Incorporated for an original term of five years and thereafter for like terms until all mineable and merchantable coal has been mined and removed, covering approximately 3,129.26 acres, more or less, all of which is located within the project take area.

12. At the time the R.D. Bailey Lake Project was first authorized by Congress in 1962 and up until May 6, 1974, the United States had expressly represented that it would not acquire mineral reserves or mineral rights in the project area; that coal underlying project lands could and would be mined during the life of the project; and that, therefore, there would be no necessity to interfere with plaintiff's or its lessees' mineral development of plaintiff's land within the project area.

13. On or about May 2, 1973, the Corps promulgated regulations entitled "Rules and Regulations Governing Mineral Exploitation on United States Project Lands, R. D. Bailey Lake, West Virginia," which regulations require the written approval of the Corps for all activities in connection with the production of minerals in and under lands in the R. D. Bailey Lake Project area. These regulations impose specific restrictions on the construction and use of new facilities and activities, and require the upgrading of existing facilities in conformance therewith.

14. On May 6, 1974, plaintiff was notified by the United States, summarily and without prior consultation, that the R. D. Bailey Lake Project plan, wherein coal mining was to be subordinated to project purposes, had been modified, and that the United States intended to acquire fee title to all of plaintiff's land within the project area and to extinguish all coal leases.

15. Subsequent to May 6, 1974, the United States has claimed a right to regulate the exploration, development, production, and removal of mineral resources in and under plaintiff's land located within the R. D. Bailey Lake Project area. In pursuance thereof, the United States, through the Corps, has imposed numerous and specific objections to plaintiff's existing coal leases and to all prospective mineral leases.

16. On February 27, 1975, the Corps imposed specific objections to the mining lease executed between plaintiff and Variable Mining Company, contending *inter alia* that mining and mineral production on plaintiff's land threatens the integrity of the Bailey Lake Project, and that plaintiff's mineral development leases are in violation of the terms of the land-lease agreement executed between plaintiff and the United States on May 14, 1974. On May 28, 1975, the Corps imposed similar objections and limitations on the mining lease executed between plaintiff and Gilbert Imported Hardwoods, Inc.

17. On July 3, 1975, the Corps claimed the right to restrict, prohibit, and where necessary to terminate the exploration, exploitation, production and removal of coal in and under plaintiff's land located within the R.D. Bailey Lake Project area. The actions of the United States have severely, if not entirely, restricted the ability of plaintiff and its lessees to extract the minerals underlying plaintiff's lands, and have impaired plaintiff's ability to obtain royalties in consideration of existing mineral development leases and to negotiate pending and future mineral development leases.

18. *Timber Harvesting and Forest Products Conversion*—Located within the project area is a 146.84 acre tract of land owned by plaintiff, which tract is identified as the William E. Hurt Tract, Leatherwood Creek, Mingo County, West Virginia (hereinafter "the Hurt Tract"). (A legal description of the Hurt Tract is attached to this petition as Appendix B). This tract contains heavy stands of valuable timber and mineral resources and was purchased by plaintiff in fee as a valuable source of timber and forestry products and for its potential mineral resources.

19. The United States had originally assured plaintiff that it would be granted a right-of-way through the R. D. Bailey Lake Project area in order to facilitate timber harvesting by plaintiff on the Hurt Tract. However, on or about December 15, 1974, the United States notified plaintiff that it would not be granted a right-of-way in order to permit timber harvesting and forest products conversion on the Hurt Tract, and that should plaintiff proceed with its expressed intention to harvest timber on the Hurt Tract, the United States would seek legal remedies to prevent same. At all times subsequent thereto, the United States has claimed a right to prohibit timber harvesting on all lands within the project area, including the Hurt Tract.

20. By engaging in the actions detailed in the preceding paragraphs in respect to plaintiff's land in the R. D. Bailey Lake Project area, the United States has entered into a continuing course of conduct which

has effectively deprived plaintiff of the free use and beneficial enjoyment of its property and resources, and has destroyed the economic value of said property and resources. Such actions represent a taking by the United States without payment of just compensation, in violation of the Fifth Amendment to the Constitution of the United States. Plaintiff is entitled to just compensation for such taking, including as part of just compensation, interest from date of taking to date of payment, and for other damages suffered as a result of the actions of the United States. In the event there are further takings or partial takings of plaintiff's land or interests therein, plaintiff will be entitled to just compensation for these takings as well, with interest from date of taking. The date or dates of taking of plaintiff's property and interests within the project area are subject to proof at trial.

Severance Damages

21. The lands taken by the United States in the R.D. Bailey Lake Project area constitute part of a larger area of property in that region which plaintiff owns in fee at the present time. Such Remaining Land, like the land taken, contains large quantities of timber and mineral resources.

22. As a result of the action of the United States in respect to plaintiff's land within the R.D. Bailey Lake Project area, the value of plaintiff's Remaining Land has greatly decreased or has otherwise been damaged. Plaintiff's Remaining Land has been dimin-

ished in value by actions of the United States as a result of a number of factors, including, but not limited to, the following:

a. Limitation of access to plaintiff's Remaining Lands which are employed for timber harvesting and forest products conversion.

b. Restrictions on exploration and development of oil and natural gas reserves on plaintiff's Remaining Land.

c. Other limitations and restrictions on ownership and operation of plaintiff's Remaining Land resulting from its proximity to the R.D. Bailey Lake Project area.

d. Adverse affect on the watershed on plaintiff's Remaining Land.

e. Reduction in market value of plaintiff's Remaining Land resulting from its proximity to the R.D. Bailey Lake Project area.

f. Reduction in the productive life of plaintiff's sawmills resulting from the taking of plaintiff's timber.

23. The exact amount of damages to plaintiff's Remaining Land and other interests is presently unknown but will be subject to proof at the trial of this action. Plaintiff is entitled to a money judgment for such damages to its Remaining Land and other interests which are a result of the taking of plaintiff's land by the United States located within the R. D. Bailey Lake Project area, with interest.

Litigation Expenses

24. Plaintiff is entitled, as part of any judgment rendered against the United States pursuant to this petition, to such sum as will reimburse plaintiff for reasonable costs, disbursements, and expenses, including, but not limited to, reasonable attorney, appraisal, forest management, economist and engineering fees, actually incurred because of this proceeding, pursuant to the provision of Section 304(c) of the Act of January 2, 1971, 84 Stat. 1906, 42 U.S.C. § 4654.

WHEREFORE, plaintiff prays that judgment be entered against the United States in an amount which will provide just compensation under the Fifth Amendment to the Constitution and other applicable laws, including damages for delay in payment, for plaintiff's property and interests in property taken or disposed of by the United States and for other damages suffered as a result of that taking including, but not limited to, severance damages; and for litigation expenses incurred by plaintiff in the prosecution of this action pursuant to Section 304(c) of the Act of January 2, 1971, 84 Stat. 1906, 42 U.S.C. § 4654;

and for such other and further relief as to the Court may appear just and proper.

Respectfully submitted,

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APPENDIX B

IN THE UNITED STATES COURT OF CLAIMS

Docket No. 315-75

[Filed Dec. 19, 1975]

GEORGIA PACIFIC CORPORATION, PLAINTIFF

v.

THE UNITED STATES OF AMERICA, DEFENDANT

ANSWER

Comes now the defendant, the United States of America, in answer to the petition filed herein, stating as follows:

FIRST DEFENSE

The petition fails to state a claim upon which relief may be granted.

SECOND DEFENSE

In its course of dealing with plaintiff with regard to the R. D. Bailey Lake Project and consequent planning for the eventual acquisition of lands and interests necessary for the project, defendant has acted in accordance with a series of agreements with plaintiff and has taken no action with respect to plaintiff's lands or interests beyond that specifically authorized by plaintiff.

THIRD DEFENSE

Throughout the lengthy history of dealings with the defendant, plaintiff, through its representatives, has on numerous occasions requested that the lands and interests to be acquired from plaintiff be acquired at one time. In reliance upon these representations, defendant has taken steps to acquire plaintiff's lands and interests as a unit at one time in accordance with plaintiff's numerous requests, has not instituted any condemnation actions of a portion of plaintiff's lands or interests, and has therefore relied to its detriment on plaintiff's stated desire to have the lands and interests acquired as a unit at one time. Consequently, plaintiff should be estopped from seeking a determination that defendant has already taken certain lands and interests in its property.

FOURTH DEFENSE

1. Paragraph 1 contains a conclusion of law not requiring a response.

2. For want of information or knowledge sufficient to form a belief in the truth thereof, defendant denies the allegations contained in paragraph 2.

3. As phrased, the allegations contained in paragraph 3 of this complaint are so vague and ambiguous that defendant cannot admit or deny them. Nevertheless, defendant states that the subject matter of this complaint has not been the subject of any prior claims proceeding.

4. Paragraph 4 contains conclusions of law not requiring a response.

5. Defendant denies the allegations contained in paragraph 5 except that defendant admits that the amount of damage, if any, is subject to trial.

6. Defendant admits the allegations of paragraph 6, except that the project is located on the Guyandotte River and its tributaries in Mingo and Wyoming Counties, West Virginia.

7. Defendant admits the allegations of paragraph 7, except that it is without sufficient information at this time to admit or deny the accuracy of Appendix A.

8-9. Defendant admits the allegations contained in paragraphs 8 and 9 of the complaint.

10. Defendant admits the allegations contained in the first sentence of paragraph 10, but lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of paragraph 10.

11. Defendant admits that it has knowledge that plaintiff has entered into, or acquired, mineral leases both prior and subsequent to the January 1974 agreement between plaintiff and the United States, except that it lacks sufficient knowledge or information to form a belief as to truth of the specific details of, or legal effect of, such agreements, and it states that any such lease documents are the best evidence of their contents.

12. Defendant denies the allegations contained in paragraph 12.

13. Defendant denies the allegations of paragraph 13, except that it admits that the Huntington District of the United States Army Corps of Engineers did produce a draft document entitled "Rules and Regulations Governing Mineral Exploration on United States Project Lands, R. D. Bailey Lake, West Virginia" on or about May 2, 1973, and affirmatively states that this document has never been adopted and that this document has not been officially issued.

14. Defendant admits the allegations contained in paragraph 14 with the exception of the allegation that notice of the change in the policy with respect to future acquisition of real property in the R. D. Bailey Lake Project Area was made summarily and without prior consultation.

15. Defendant denies the allegations of paragraph 15, except that defendant admits it has claimed rights under the terms of its lease agreement with plaintiff concerning use of subsurface resources and has indicated objections to existing and prospective mineral leases as part of the negotiations concerning the specific lands and interests to be acquired by defendant in the future.

16. Defendant admits the allegations of paragraph 16, except that it denies that the Corps "imposed" any limitations but merely stated its objections.

17. Defendant denies the allegations in paragraph 17, except that defendant admits that defendant did inform plaintiff by letter on or about July 3, 1975, of its intended policy concerning future acquisition

and defendant states that the document is the best evidence of its contents.

18. Defendant admits the allegations in paragraph 18, except that it is without sufficient knowledge or information to form a belief as to why plaintiff purchased the property.

19. Defendant denies the allegations contained in paragraph 19, except that defendant admits that on or about December 15, 1974, it notified plaintiff that the referenced right of way would not be granted.

20. Defendant denies the allegations of the first sentence of paragraph 20, and states that the remaining allegations of paragraph 20 are conclusions of law not requiring a response.

21. For want of knowledge or information sufficient to form a belief as to the truth thereof, the allegations of paragraph 21 are denied.

22-23. Defendant denies the allegations contained in paragraphs 22 and 23.

24. Paragraph 24 contains conclusions of law requiring no response.

25. Defendant denies each and every allegation not specifically admitted above.

WHEREFORE, defendant requests this Court to dismiss plaintiff's petition.

Respectfully submitted,

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By: _____

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